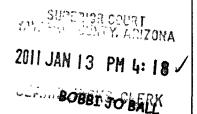
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Attorneys for STATE OF ARIZONA



BY:\_\_\_\_

## IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

## IN AND FOR THE COUNTY OF YAVAPAI

STATE OF ARIZONA,

Plaintiff,

VS.

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STEVEN CARROLL DEMOCKER,

Defendant.

CAUSE NO. P1300CR201001325

STATE'S MOTION FOR CLARIFICATION OF RULING RE: NOTICE

Assigned to Honorable David L. Mackey

The State of Arizona, by and through Sheila Sullivan Polk, Yavapai County Attorney, and her deputy undersigned respectfully submits its motion for a clarification of the Presiding Judges Ruling re: Notice filed January 11, 2011. The State's motion is supported by the following Memorandum of Points and Authority.

It is the State's position that a judge noticed pursuant to Rule 10.2 ARCP cannot make rulings of law in the case pursuant to Rule 10.6 ARCP.

Rule 10.6

When a motion or request for change of judge is timely filed under this rule, the judge shall proceed no further in the action, except to make such temporary order as may be necessary in the interest of justice before the action can be transferred to the presiding judge or the presiding judge's designee. (Emphasis added).

Generally, the disqualification of a judge does not prevent him from performing ministerial acts not involving judicial discretion. *State v Miranda*, 3 Ariz.App. 550, 416 P.2d 444 (1966). An **act** is **ministerial** where the law requiring it to be performed prescribes the time, manner, and

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occasion of its performance with such certainty that nothing remains for judgment or discretion.

Magma Copper Co. v. Arizona State Tax Commission, 67 Ariz. 77, 85, 191 P.2d 169, 174 (1948).

Any other act or decision following a 10.2 notice would appear to violate Rule 10.6.

## **Conclusion:**

Rule 10.6 is unambiguous and supports the State's position that Defendant's Objection to Notice of Judge cannot be heard by Judge Darrow. Under the law the presiding Judge must decide the issue or reassign the case to a Judge other than Judge Darrow.

The State requests that the right to change of judge be preserved pursuant to Rule 10.4 (a) ARCP.

The State requests that Judge Darrow be precluded from ruling on the Defendant's Objection to Notice of Judge and State's Response to Defendant's Objection to Notice of Judge in accordance with Rule 10.6.

**RESPECTFULLY SUBMITTED** this <u>day</u> of January, 2011.

Sheila Sullivan Polk
YAVAPAI COUNTY ATTORNEY

Joseph C. Budner

Deputy County Attorney

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| 3110  | 2  |  |
|   | 3  | COPY of the foregoing Emailed this day of January, 2011, to: |
|   | 4  | Honorable David L. Mackey                                    |
|   | 5  | Presiding Judge  |
|   | 6  | Yavapai County Superior Court<br>(via email)                 |
|   | 7  | Honorable Warren R. Darrow                                   |
|   | 8  | Division PTB   |
|   | 9  | Yavapai County Superior Court<br>(via email)                 |
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|   | 25 | By: K Mybb   |